

	Initials	Date	Comments
Preparer Initials/Date Completed	Amb	4.30.19	
1st Level Review			
2nd Level Review	JMT	5/2/2019	No Comments

Purpose:

To document discussion document review & approval.

Source:

See various levels of review & approval in Discussions section below.

Scope:

Submitted the discussion document to Director, AIG, Editor, QA and OC for approval in accordance with OIG Project Management Handbook requirements.

Conclusion:

Discussion document has been reviewed & approved by the AIG, Editor, OC, and QA in accordance with OIG Project Management Handbook requirements.

Discussions:

1. Director review & approval:

[Link: G.1 - Discussion Document--Approvals - Discussion Document to Director 2.26.2019.pdf](#)

[Link: G.1 - Discussion Document--Approvals - Discussion Document Response to Director 2.28.2019.pdf](#)

[Link: G.1 - Discussion Document--Approvals - Discussion Document Director Approval 2.26.2019.pdf](#)

2. AIG review & approval

[Link: G.1 - Discussion Document--Approvals - 4.17.19 DD Clears AIG.pdf](#)

3. OCCPA (Edit/OC) review & approval

[Link: G.1 - Discussion Document--Approvals - 4.4.19 DD Clears OCCPA.pdf](#)

4. QA review & approval

[Link: G.1 - Discussion Document--Approvals - 4.24.19 DD Clears QA.pdf](#)

5. Discussion Document Clearance

[Link:](#) G.1 - Discussion Document--Approvals - 4.29.19 DD Approval to Issue-PLD.pdf

6. Discussion Document Issued

[Link:](#) G.1 - Discussion Document--Approvals - 4.29.19 DD Issuance Email Transmittal.pdf

[Link:](#) G.1 - Discussion Document--Approvals - 4.29.2019 ADP Discussion Document Issued.pdf

[Link:](#) G.1 - Discussion Document--Approvals - 4.29.2019 ADP Discussion Document Issued.docx

From: [Kasper, Janet](#)
To: [Bennett, Angela](#)
Cc: [Trefry, John](#)
Subject: QA Cleared - DD for ADP
Date: Wednesday, April 24, 2019 11:14:10 AM

Your discussion document for ADP has cleared QA.

Janet

From: Bennett, Angela
Sent: Tuesday, April 23, 2019 6:36 PM
To: Kasper, Janet <kasper.janet@epa.gov>
Cc: Trefry, John <Trefry.John@epa.gov>
Subject: RE: ADP Discussion Document Ready for Referencing

Thanks Janet! I have added a clean copy—to the section—1.b.

From: Kasper, Janet
Sent: Tuesday, April 23, 2019 10:38 AM
To: Bennett, Angela <Bennett.Angela@epa.gov>
Cc: Trefry, John <Trefry.John@epa.gov>
Subject: RE: ADP Discussion Document Ready for Referencing

Comments are cleared, but I need to see a clean copy of the report.

From: Bennett, Angela
Sent: Monday, April 22, 2019 1:10 PM
To: Kasper, Janet <kasper.janet@epa.gov>
Cc: Trefry, John <Trefry.John@epa.gov>
Subject: RE: ADP Discussion Document Ready for Referencing

Hi Janet,

I have addressed your comments and updated the report.

Angela

From: Kasper, Janet
Sent: Tuesday, April 16, 2019 12:13 PM
To: Bennett, Angela <Bennett.Angela@epa.gov>
Cc: Trefry, John <Trefry.John@epa.gov>
Subject: RE: ADP Discussion Document Ready for Referencing

Comments are completed.

From: Bennett, Angela
Sent: Monday, April 15, 2019 3:47 PM
To: OIG Referencers <OIG_Referencers@epa.gov>
Cc: Trefry, John <Trefry.John@epa.gov>
Subject: ADP Discussion Document Ready for Referencing

The subject document is found in OA-FY18-0085 Audit of Administratively Determined Positions—Section G.2, Item 1. The latest version of the report that cleared Kevin/OCCPA is also in G.2, Item 1.a.

Angela Bennett

Project Manager
US EPA – OIG
Office of Audits and Evaluations
Forensics Directorate
bennett.angela@epa.gov
404.562.9844 (w)
(b) (6) (c)

	Initials	Date	Comments
Preparer Initials/Date Completed	CM	2/15/18	
Auditor Review			
1 st Level Review	JB	3/13/18	
2 nd Level Review	JMT	6/12/2018	No Comments

Purpose:

To document the Agency's response to our follow-up questions from documents we have received and from our interviews.

Source:

Email from Wesley Carpenter on February 13, 2018 ([email message in Detail section below](#))

Scope: We reviewed the Agency response to our questions that came out of our interviews and other data analysis. We came up with follow-up questions for ERD and for a future meeting with the White House Liaison.

Conclusion: Wes provided us with contact information for the White House Liaison. Guidance for AD positions, Schedule C positions and Non-Career SES positions was attached to the email (find links in the *Details* section below).

Howard Barnett responded to our other follow up questions.

- He confirmed that the Plum Book does not include Administratively-Determined positions. The OPM Plum Book includes Schedule C and non-Career SES positions. Also, OPM has an Executive Schedule C System that agencies can update so that OPM information on political appointees is current and correct.
- He provided detailed information on the on-boarding process for AD positions and different political appointments. Some key differences are that AD appointments only require a statement of work (as opposed to a position description) and no OPM forms or approval is required. He also mentioned that (b) (5)

We have further compared and analyzed the different position types in w/p E.06 [\[Link: - Analysis of different position types \(AD v Sch C\)\]](#). OK
JMT Documents attached to the email below were used in this analysis.

We will arrange a follow-up meeting with the White House Liaison and determine if we have other people in the Administrator's Office to meet with. Meeting will be to clarify process that happens before documents come to ERD for processing.

Details:

From: Carpenter, Wesley

Sent: Tuesday, February 13, 2018 11:08 AM

To: McWilliams, Claire <McWilliams.Claire@epa.gov>

Cc: Swan, Wendy <swan.wendy@epa.gov>; Van Surksum, Tyler <van-surksum.tyler@epa.gov>; Bloom,

Jean <Bloom.Jean@epa.gov>; Tellis, Vickie <Tellis.Vickie@epa.gov>; Barnett, Howard <Barnett.Howard@epa.gov>; Hembrey, Cheri <Hembrey.Cheri@epa.gov>; Smith-Starckey, Tracye <Smith-Starckey.Tracye@epa.gov>; Gray, Linda <gray.linda@epa.gov>; Helm, Arron <Helm.Arron@epa.gov>; Taylor, Jeremy <Taylor.Jeremy@epa.gov>; Hart, Debbi <Hart.Debbi@epa.gov>; Hunt, Loretta <Hunt.Loretta@epa.gov>

Subject: RE: OIG Follow-up Questions

Claire:

Per your request, the responses to bullets 2 and 3 are provided below in an email from Howard Barnett. In response to the first bullet, please feel free to reach out to Mr. Charles Munoz, EPA White House Liaison, any time tomorrow or later this week as we will be notifying him later today that the OIG wants to meet with him on the EPA's AD positions. Mr. Munoz can be reached at (202) 564-3097 or Munoz.charles@Epa.gov. Please let me know if you have any other questions or need additional information. Thanks.

Wes

Attachment 1: [\[Link: E.01 - Agency Response to Follow-up Questions \(2-13-18\) - AD Guidance.doc\]](#)

OK JMT

Attachment 2: [\[Link: E.01 - Agency Response to Follow-up Questions \(2-13-18\) - Steps to_Guidance.doc\]](#)

OK JMT

Attachment 3: [\[Link: E.01 - Agency Response to Follow-up Questions \(2-13-18\) - Guidance.doc\]](#) OK JMT

Wesley J. Carpenter

Deputy Director, EPA's Office of Human Resources

Tel. No.: 202-564-2019

Cell Phone: (b) (6)

E-mail: carpenter.wesley@epa.gov

From: Barnett, Howard

Sent: Friday, February 09, 2018 1:49 PM

To: Carpenter, Wesley <Carpenter.Wesley@epa.gov>

Cc: Tellis, Vickie <Tellis.Vickie@epa.gov>

Subject: RE: OIG follow-up questions

Wes,

2nd bullet – to my knowledge, AD information is not listed in the Plum Book. Plum Book information is compiled from reports pertaining to Schedule C and Non-Career SES positions. OPM sends out a call to agencies to go into the Executive Schedule C System to make sure these types of positions and their information are current and correct for the Plum Book module. (b) (5)

3rd bullet - see below:

AD Appointment – Signed SF52 Request for Personnel Action, resume, fact sheet on candidate with PII information, statement of work (shorter version of a position description which outlines the duties that will be performed and the supervisor), and memorandum to the record (informs ERD of the Administrator's request and authorizes the use one of the AD slots for an appointment). For AD appointments, **there is no OPM involvement**. The Administrator has the authority to fill 30 positions as deemed necessary to the discharge of his/her functions under Public Law 95-190 and other provisions of law; positions are filled without regard to civil service laws; position and grade levels may be equivalent up to the grade 15; **(b) (5)**

AD employees serve at the pleasure of the EPA Administrator.

Schedule C Appointment – Signed SF52 Request for Personnel Action, resume, fact sheet on candidate with PII information, a proposed position description with signed pd coversheet, ERD would also prepare and submit OPM form 1019 Request for Schedule C Appointing Authority (this document is prepared via an online system through OPM, printed and presented to the Administrator or his/her designee and the WHL for review and signature. Once signed, it is returned to ERD to be uploaded into the OPM system and sent electronically to OPM for review and final approval. Once approved by OPM, their representative will sign it and send it back to ERD in order to continue the process of bringing the person onboard. The appointment cannot be made until the approved 1019 has been sent back to the agency from OPM. Appointments to these positions require advance approval from the White House Office of Presidential Personnel and OPM. Schedule C positions and grade levels may be up to the grade 15 level. The Administrator must certify that the position was not created solely or primarily for the purpose of detailing the incumbent to the White House.

Entitlement	Schedule C (Permanent/Regular)
Number	
Appointing Authority	5 CFR, Section 213.3301
Citation	Positions at the GS-15 grade level or below that OPM has excepted from the competitive civil service because they include policy determining responsibilities or require the incumbent to serve in a confidential relationship to a key official. OPM authorizes the establishment of each Schedule C position and revokes the authority when the position is vacated. Positions may not be re-established without OPM's approval to use the Schedule C authority.
Approval	Administrator's approval on the SF-52; White House Office of Presidential Personnel, EPA Security Office, EPA White House Liaison, and OPM approval of the position.
Restrictions	None, provided all political approvals are given
Time limits	Indefinite -- for the duration of the Administration
Leave	Eligible to earn both sick and annual leave; amount of annual leave earned per pay period is contingent upon years of Federal Government service.
Advance-in-Hire	Eligible for first appointment

Retirement/Benefits	Eligible
Travel/Transportation	May receive payment of pre-employment interview expenses and payment of travel expenses from place of residence at the time of selection to the duty station.
Per Diem	Eligible
Recruitment Bonus	Not Eligible

Non-Career SES Appointment - Signed SF52 Request for Personnel Action, resume, fact sheet on candidate with PII information, a proposed position description with signed pd coversheet, ERD would also prepare and submit OPM form 1652 Request for Senior Executive Service Appointing Authority (this document is prepared via an online system through OPM, printed and presented to the Administrator or his/her designee and the WHL for review and signature. Once signed, it is returned to ERD to be uploaded into the OPM system and sent electronically to OPM for review and final approval. Once approved by OPM, their representative will sign it and send it back to ERD in order to continue the process of bringing the person onboard. The appointment cannot be made until the approved 1652 has been sent back to the agency from OPM. The EPA is allocated 30 SES non-career positions.

Appointments to these positions may be made without regard to competitive requirements. Advance approval from the White House Office of Presidential Personnel and OPM is required.

Entitlement	Non-career SES Appointments
Number of Approved Positions	30
Approval	Administrator, White House Office of Presidential Personnel & OPM
Time limits / Restrictions	Serves at the pleasure of the Administrator; cannot be placed in career-reserved position; individual person does not receive tenure or competitive status
Pay	Min -- \$124,406 Max -- \$179,700 (frozen at 2010 level until 04/28/17)
Retirement/Benefits	Eligible
Leave	Annual -- 8 hours per pay period; 720 hours carried forward into next leave year Sick -- 4 hours per pay period
Travel/Transportation to first duty station	May receive payment of pre-employment interview expenses and payment of travel expenses from place of residence at the time of selection to the duty station.
Per Diem	Not eligible
Recruitment Bonus	Not eligible

Requirements

For each of the above authorities, there are specific administrative requirements which need to be met for the case to proceed to appointment in an appropriate and timely manner. These are:

- The provision of the proposed appointee's name, social security number, date and place of birth, working email address, work experience (resume), salary history, and preparation of appointment paperwork (SF-52, Request for Personnel Action, and a position description with cover sheet);
- An identification of the position to be encumbered, including the proposed title, series and grade-level (or salary level), to match the proposed appointee's background to the proposed position [Note: Appointments are subject to Federal qualifications and compensation requirements];
- Personnel security review before appointment (a full background check is completed after the appointee is on-board in most cases depending on the level of security clearance required); and
- Processing on-board including swearing-in, signing of appointment affidavits, and completion of new employee forms.

**HOWARD BARNETT
BRANCH CHIEF, HUMAN RESOURCES AND OPERATIONS BRANCH
OCSPP/OPP/ITRMD
S-9913 POTOMAC YARDS SOUTH
ARLINGTON, VA
(703) 347-0311**

ITRMD.....WHERE EVERY CUSTOMER IS A VIP!

From: Carpenter, Wesley
Sent: Friday, February 09, 2018 12:45 PM
To: Tellis, Vickie <Tellis.Vickie@epa.gov>; Barnett, Howard <Barnett.Howard@epa.gov>
Subject: FW: OIG follow-up questions

Vickie/Howard:

Good afternoon. Happy Friday. I need your help in answering two of the three OIG's questions below on the AD positions (specifically, the last two bullets). I am working out the details on the first bullet. Please advise. Thanks.

Wes

From: McWilliams, Claire

Sent: Thursday, February 08, 2018 6:02 PM

To: Carpenter, Wesley <Carpenter.Wesley@epa.gov>; Smith-Starckey, Tracye <Smith-Starckey.Tracye@epa.gov>

Cc: Swan, Wendy <swan.wendy@epa.gov>; Van Surksun, Tyler <van-surksun.tyler@epa.gov>; Bloom, Jean <Bloom.Jean@epa.gov>

Subject: OIG follow-up questions

Hi Wes,

Thank you for taking the time to meet with us on Tuesday. As a result of that meeting we have a couple of additional questions:

- It looks as if the White House Liaison is Charles Munoz. Is that correct? After discussing it internally, we would like to meet with him to make sure we understand the process from the Administrator's office side. How would you recommend we go about arranging a meeting? Who should we contact?
- Are you aware if AD positions are recorded in OMB's Plum Book?
- Could you please send any checklists of documents needed that ERD may have for on-boarding Administratively Determined positions, Schedule C positions and Non-Career SES political appointees? This will be helpful for us as we continue to understand differences between these appointments.

Thanks again, and let us know if you need clarification for anything.

Claire

Claire McWilliams, CPA
U.S. EPA OIG (Region 5)
77 W. Jackson Blvd.
Chicago, IL 60604
(312) 886-4041

	Initials	Date	Comments
Preparer Initials/Date Completed	CM	3/13/18	
Auditor Review			
1 st Level Review	JB	3/16/18	
2 nd Level Review	JMT	6/23/2018	No Comments

Purpose: To document the Agency's response to our follow-up questions regarding AD positions and other political appointment designations.

Source: Email from Wesley Carpenter, Deputy Director, EPA's Office of Human Resources on March 8, 2018 ([email message in Detail section below](#))

Additional follow-up emails:

- [Link:](#) E.01b - ERD Follow-up Questions II (3-8-18) - RE_ OIG Follow-up Questions.pdf JMT
- [Link:](#) E.01b - ERD Follow-up Questions II (3-8-18) - RE_ OIG Follow-up Questions Wes.pdf JMT
- [Link:](#) E.01b - ERD Follow-up Questions II (3-8-18) - FW_ OIG Follow-up Questions 3-13-18.pdf JMT

Scope: We reviewed the Agency response to our follow-up questions, particularly around the nature of AD positions and how they are similar or different to Schedule C and Non-Career SES appointments.

Conclusion:

According to the Agency, AD positions are **not** considered political appointees. However the AD positions serve at the will of the Administrator and are selected by the Administrator. (b) (5)

(b) (5)
([Link:](#) E.10 - Meeting with OPM)
JMT

Office of Human Resources, Executive Resource Division (ERD) also said that AD appointments do not have to take the ethics pledge because they fall outside of the definition of "appointment." The ethics pledge concern is further reviewed in ([Link:](#) w/p D.09 - Ethics Guidance) and ([Link:](#) w/p E.08 - Analysis of AD Position Types and Ethics) JMT. We also interviewed EPA's Ethics Director ([Link:](#) E.09 - Meeting with EPA Ethics Director) JMT.

In evaluating the list of Schedule C positions provided ([Link:](#) w/p E.01b - ERD Follow-up Questions II (3-8-18) - Current EPA Schedule C March 2018.XLSX) JMT, we noted that there are two press secretary positions. From our earlier AD analysis ([Link:](#) w/p E.02 - AD Report Analysis Summary (2009 - 2017)) JMT, we found two additional press secretaries hired under AD authority. (b) (5)

Additionally, when comparing lists ([Link:](#) E.01b - ERD Follow-up Questions II (3-8-18) - Analysis of Sch C list.XLSX) JMT, we noticed the following employees were listed as being converted to Schedule C

from AD appointments but then were not on the Schedule C list provided. The table below includes information from the Agency on personnel actions for these employees. This shows more conversions from Schedule C to NC SES appointments and one Schedule C back to an AD appointment. We will discuss with OPM the multiple conversions as well. ([Link: E.10 - Meeting with OPM](#))

Position Title	Name	(b) (6) NOTES ON 3/9	(b) (6) NOTES ON 3/13
(b) (5), (b) (6)		Converted to NC SES 7/16/17	(b) (5), (b) (6)
		Converted to NC SES 8/13/17	
		Converted to NC SES 7/16/17	
		Converted to Schedule C on 5/7/17	
		Converted to Schedule C on 7/16/17	
		Converted to NC SES on 10/1/17	

Details:

Original email response from Wes Carpenter (additional follow-up is linked in the *Source* section above):

From: Carpenter, Wesley

Sent: Thursday, March 08, 2018 6:11 AM

To: McWilliams, Claire <McWilliams.Claire@epa.gov>

Cc: Swan, Wendy <swan.wendy@epa.gov>; Bloom, Jean <Bloom.Jean@epa.gov>; Van Surksun, Tyler <van-surksun.tyler@epa.gov>; Gray, Linda <gray.linda@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>; Taylor, Jeremy <Taylor.Jeremy@epa.gov>; Barnett, Howard <Barnett.Howard@epa.gov>; Lemley, Lauren <Lemley.Lauren@epa.gov>; Hembrey, Cheri <Hembrey.Cheri@epa.gov>; Smith-Starckey, Tracie <Smith-Starckey.Tracie@epa.gov>

Subject: RE: OIG Follow-up Questions

Claire:

Good morning. Per your request, the answers to your questions on AD, Schedule C and noncareer SES positions are provided below in blue-bolded text. It would be helpful to know the OIG's path forward on this project as well as a timeline for completion, so OARM can plan accordingly. Thanks.

([Link: E.01b - ERD Follow-up Questions II \(3-8-18\) - Current EPA Schedule C March 2018.XLSX](#))

Wes

Wesley J. Carpenter

Deputy Director, EPA's Office of Human Resources

Tel. No.: 202-564-2019

Cell Phone: (b) (6)

E-mail: carpenter.wesley@epa.gov

1. Are EPA SDWA AD appointments considered political appointees? **No. Administratively Determined (AD) appointments, established under authority of the Safe Drinking Water Act, 42 U.S.C. § 300j-10, do not proceed through the PPO/OPM vetting and approval process. Instead, they are appointed directly to the EPA through a process that is overseen by the Chief of Staff. AD positions are filled non-competitively (exempt from Merit Promotion principles); thus, employees serving in these positions serve at the will of the Administrator.** Though not political appointments, these positions are managed as a practical matter by the White House Liaison, and selections are made by the Administrator.

2. What is the average length of time it takes to bring on a person for AD, Schedule C, and NC-SES positions? Would the length be different during a Presidential and/or Administrative change? (b) (5)

While all three categories have the personnel security process to clear, the AD appointment does not have to clear the PPO/OPM approval process.

(b) (5)

3. How many Schedule C positions is EPA allowed? Is there a maximum amount of EPA Schedule C positions? How many Schedule C positions does EPA currently have filled? Please provide the current list of the agency's OPM approved Schedule C positions. **While there is no official cap on the number of Schedule C positions allowed, PPO does monitor and could possibly have an unofficial cap in place. See attached list of current EPA Schedule C employees.**

4. EPA is allocated 30 non-career SES positions. Does OPM determine the number? If not OPM, how is the number determined? **Yes. As taken from the OPM SES Desk Guide for 2016; In addition to allocating spaces, OPM also allocates specific appointment authorities to agencies. Adjustments in the number of SES appointment authorities are limited by law. Under 5 U.S.C. 3134(b), the total number of SES noncareer authorities may not exceed 10 percent of the Governmentwide SES position allocation. Further, under 5 U.S.C. 3134(d), the number of SES positions in any agency filled by noncareer appointees may not exceed the greater of 25 percent of the agency's SES allocation, or the number of positions filled on October 13, 1978, by noncareer executive assignment, or appointment to level IV or V of the Executive Schedule not requiring Senate confirmation. This limitation does not apply to agencies having fewer than four SES space allocations.** (b) (5)

Under 5 CFR 317.601(b), each use of a noncareer appointment authority must be approved individually by the Office of Personnel Management, and the authority reverts to the Office upon

departure of the incumbent, unless otherwise provided by the Office. In this way, OPM continuously resets the number of noncareer appointment authorities in each agency, ensures that the 10 percent Governmentwide limit is not exceeded, and meets OPM's statutory obligation to determine annually the number of noncareer allocations for each agency.

5. Has OPM not approved any 2017 Schedule C or NC SES appointments? (b) (5)

6. Do you have actual checklists of items you use for gathering required documents for each type of appointment? (AD, Schedule C, NC-SES). Currently, OARM does not have established checklists; however, the RTP HR SSC is planning to and have communicated to customers that we intend to establish SOPs and checklists.

7. Do people in AD positions, Schedule C positions, and NC-SES positions sign an ethics pledge? (EO 13770)? Are people that are brought on as an AD position and then converted to Schedule C/NC-SES required to sign on ethics pledge? EPA's Administratively Determined (AD) appointees are not required to sign an ethics pledge. This type of appointment falls outside the definition of "appointment" set forth in both Executive Order 13490 and Executive Order 13770 at Section 2(b). See Office of Government Ethics advisories entitled "Guidance on Executive Order 13770," LA-17-03 (March 20, 2017) and "Executive Order 13770," LA-17-02 (February 6, 2017), which apply to the following OGE advisories from the last administration in full: "Who Must Sign the Ethics Pledge?" DO-09-010 (March 16, 2009); and "Signing the Ethics Pledge," DO-09-005 (February 10, 2009). Schedule C and NC-SES positions, by contrast, do fall under the definition of "appointment" and are required to sign the pledge. In the event that an AD appointee is converted to either Schedule C or NC-SES, then s/he will be directed by the EPA Ethics Office to sign the pledge.

8. From the EPA Intranet on AD positions: (b) (5)

From: "McWilliams, Claire" <McWilliams.Claire@epa.gov>

Date: March 2, 2018 at 3:28:15 PM EST

To: "Carpenter, Wesley" <Carpenter.Wesley@epa.gov>

Cc: "Swan, Wendy" <swan.wendy@epa.gov>, "Bloom, Jean" <Bloom.Jean@epa.gov>, "Van Surksum, Tyler" <van-surksum.tyler@epa.gov>

Subject: RE: OIG Follow-up Questions

Hi Wes,

Thank you again for your prompt response to our last round of questions. Because of the instances found in which AD positions were converted to Schedule C and NC-SES positions, we are familiarizing ourselves with the hiring process of political appointees. As a result, we have the following additional questions. We would appreciate a response by COB March 7, 2018.

Thanks in advance!
Claire

1. Are EPA SDWA AD appointments considered political appointees?
2. What is the average length of time it takes to bring on a person for AD, Schedule C, and NC-SES positions? Would the length be different during a Presidential and/or Administrative change?

It is very well possible that it could/would take longer to bring a candidate on under a Schedule C and/or NC-SES appointment during a Presidential change.

3. How many Schedule C positions is EPA allowed? Is there a maximum amount of EPA Schedule C positions? How many Schedule C positions does EPA currently have filled? Please provide the current list of the agency's OPM approved Schedule C positions.
4. EPA is allocated 30 non-career SES positions. Does OPM determine the number? If not OPM, how is the number determined? Yes. As taken from the OPM SES Desk Guide for 2016;
5. Has OPM not approved any 2017 Schedule C or NC SES appointments?
6. Do you have actual checklists of items you use for gathering required documents for each type of appointment? (AD, Schedule C, NC-SES).
7. Do people in AD positions, Schedule C positions, and NC-SES positions sign an ethics pledge? (EO 13770)? Are people that are brought on as an AD position and then converted to Schedule C/NC-SES required to sign on ethics pledge?

8. From the EPA Intranet on AD positions: (b) (5)

[REDACTED]

	Initials	Date	Comments
Preparer Initials/Date Completed	wjs	4/16/2018	
1 st Level Review	JB	5/16/18	No comment.
2 nd Level Review	JMT	5/30/2018	No Comments

Purpose:

To document the agency's response to the draft Management Alert, *Salary Increases for Certain Administratively Determined Positions*, issued April 11, 2018.

Source:

Email correspondence from agency (Links to email files in Details section below)

Scope:

Documented the agency's response to the draft Management Alert issued on April 11, 2018. Documented additional email correspondence related to the agency's response.

Conclusion:

The agency provided a response to the draft Management Alert report, *Salary Increases for Certain Administratively Determined Positions* on April 15, 2018.

These salary determinations for appointees were made by the Agency chief of staff, White House liaison, and Agency human resources staff based on previous salary history and increases in salary were made due to either new and additional responsibilities or promotions. The salaries involved were meant to correspond directly with the responsibilities the individual held and to attempt to ensure no salary disparities among positions of equivalent or similar responsibilities with other political appointees as much as possible. As employees continue to work in the agency reaching milestones like one year of employment and/or continue to take on new responsibilities, we will further evaluate their salaries to ensure the employees compensation is commensurate with their seniority and work. [Link: B.3a - Agency Response to Management Alert - Email-RJackson to AElkins_41518 255pm-Agency Resp to MA.pdf] JB JMT

The OIG did not evaluate the agency's response.

Details:

Files attached

1. Agency response (Ryan Jackson) to draft report (received 4/15/2018, 2:55 pm) – [Link: B.3a - Agency Response to Draft Management Alert - Email-RJackson to AElkins_41518 255pm-Agency Resp to MA.pdf] JB
2. Art Elkins email to Ryan Jackson, 4/15/2018 @ 3:08 pm (will include response in report) – [Link: B.3a - Agency Response to Draft Management Alert - Email-AElkins to RJackson_41518 308pm -EPA resp inc.pdf]
3. Art Elkins email to Ryan Jackson with unredacted files (4/16/2018, 10:34 am) – [Link: B.3a - Agency Response to Draft Management Alert - Email-AElkins to RJackson-unredacted files_41618 1034am.pdf]
4. Unredacted files (Appendices A-G) – [Link: B.3a - Agency Response to Draft Management Alert - Combined_unredacted.pdf]

5. Art Elkins email to Ryan Jackson, 4/13/2018 @ 5:48 pm (clarification on files/agency documents) – [\[Link: B.3a - Agency Response to Draft Management Alert - Email-AElkins to RJackson_41318 548pm-EPA docs.pdf\]](#)
6. Art Elkins email to Alan Larsen, 4/13/2018 @ 5:44 pm (Monday discussion of documentation) – [\[Link: B.3a - Agency Response to Draft Management Alert - Email-AElkins to ALarsen-Disc Mond_41318 544pm.pdf\]](#)
7. Alan Larsen email to Art Elkins, 4/13/2018 @ 5:38 pm (source of unredacted documents) – [\[Link: B.3a - Agency Response to Draft Management Alert - Email-ALarsen to AElkins-unredacted_41318 538pm.pdf\]](#)
8. Art Elkins email to Ryan Jackson, 4/13/2018 @ 5:32 pm (unredacted documents request to team) – [\[Link: B.3a - Agency Response to Draft Management Alert - Email-AElkins to RJackson-unredacted info_41318 532pm.pdf\]](#)
9. Art Elkins email to Ryan Jackson, 4/13/2018 @ 5:28 pm (MA, no recommendations, no 48 hour ext, agency can provide resp anytime) – [\[Link: B.3a - Agency Response to Draft Management Alert - Email-AElkins to RJackson_MA Quest Resp_41318 528pm.pdf\]](#)
10. Art Elkins email to Ryan Jackson, 4/13/2018 @ 5:20 pm (Optional Action, comments by noon, April 13) – [\[Link: B.3a - Agency Response to Draft Management Alert - Email-AElkins to RJackson-Comment info_41318 520pm.pdf\]](#)
11. Ryan Jackson email to Art Elkins, 4/13/2018 @ 5:09 pm (found report Wednesday, opportunity to respond?) – [\[Link: B.3a - Agency Response to Draft Management Alert - Email-RJackson to AElkins_4132018 509pm.pdf\]](#) **JB**
12. Art Elkins email to OIG management, 4/13/2018 @ 5:08 pm (FYI) – [\[Link: B.3a - Agency Response to Draft Management Alert - Email-AElkins FYI to Mgmt_41318 508pm.pdf\]](#)
13. Ryan Jackson email to Art Elkins, 4/13/2018 @ 5:05 pm (Will look for report) – [\[Link: B.3a - Agency Response to Draft Management Alert - Email-RJackson to AElkins_4132018 505pm.pdf\]](#)
14. Art Elkins email to Ryan Jackson, 4/13/2018 @ 5:04 pm (clarification report send date, audit team request) – [\[Link: B.3a - Agency Response to Draft Management Alert - Email-AElkins to RJackson_41318 504pm.pdf\]](#)
15. Ryan Jackson email to Art Elkins, 4/13/2018 @ 4:52 pm (trouble finding report email, resend) – [\[Link: B.3a - Agency Response to Draft Management Alert - Email-RJackson to AElkins_41318 452pm.pdf\]](#)
16. Art Elkins email to Ryan Jackson, 4/13/2018 @ 4:45 pm (management alert; no 30 day response, no agency response by noon today) – [\[Link: B.3a - Agency Response to Draft Management Alert - Email-AElkins Resp to RJackson_41318 445pm.pdf\]](#)
17. Ryan Jackson email to Patrick Sullivan, 4/13/2018 @ 4:36 pm (reporter may be incorrect; seen no initial findings or 30 day warning) – [\[Link: B.3a - Agency Response to Draft Management Alert - Email-RJackson Resp to PSullivan_41318 436pm.pdf\]](#)
18. Patrick Sullivan email to Ryan Jackson, 4/13/2018 @ 4:34 pm (issue handled by OIG OA&E, forwarded message) – [\[Link: B.3a - Agency Response to Draft Management Alert - Email-PSullivan Resp to RJackson_41318 434pm.pdf\]](#)
19. Ryan Jackson email to Patrick Sullivan et al, 4/13/2018 @ 4:15 pm (reporter request, agency opportunity to review findings etc) – [\[Link: B.3a - Agency Response to Draft Management Alert - Email-RJackson to PSullivan CSheehan AElkins_4132018 415pm.pdf\]](#)
20. Chuck Sheehan email to John Trefry, 4/16/2018 @ 1:31 pm (thanks) – [\[Link: B.3a - Agency Response to Draft Management Alert - Email-C Sheehan to JTrefry-Rpt info Ag Resp_41318 131pm.pdf\]](#)
21. Kevin Christensen email to Chuck Sheehan, Art Elkins, 4/16/2018 @ 1:28 pm (planned – agency provided opportunity to respond; did not) – [\[Link: B.3a - Agency Response to Draft Management Alert - Email-KChristensen to CSheehan-agency resp_41318 128pm.pdf\]](#) **JB**

22. Chuck Sheehan email to Art Elkins (John), 4/16/2018 @ 1:26 pm (Questions on agency opportunity to comment) – [[Link: B.3a - Agency Response to Draft Management Alert - Email-CSheehan to AElkins-Resp Quest_41318 126pm.pdf](#)]
23. Alan Larsen to Kevin Christensen, 4/16/2018 @ 1:12 pm (expect to issue Monday afternoon) – [[Link: B.3a - Agency Response to Draft Management Alert - Email-ALarsen to KChristensen-expected issuance_41318 112pm.pdf](#)]
24. Alan Larsen to OIG Management, 4/16/2018 @ 1:01 pm (b) (5) [REDACTED] – [[Link: B.3a - Agency Response to Draft Management Alert - Email-ALarsen to Team Mgmt-Agency no Resp_41318 101pm.pdf](#)] **JB**
25. Christine El-Zoghbi email to Alan Larsen & others, 4/16/2018 @ 12:58 pm (John confirmed no response) – [[Link: B.3a - Agency Response to Draft Management Alert - Email-CEl-Zoghbi to ALarsen-no resp-41318 1258pm.pdf](#)] **JB**

	Initials	Date	Comments
Preparer Initials/Date Completed	wjs	2/05/2018	
1 st Level Review			
2 nd Level Review	JMT	6/13/2018	No Comments

Purpose: To interview Executive Resources Division (ERD) personnel in the Office of Human Resources (OHR) to determine the agency's policies and procedures related to Administratively Determined Position authority and hiring process.

Source:

Meeting between OIG and ERD, January 24, 2018 (see details in Scope)

Meeting Participants

- Wes Carpenter, Deputy Director, OHR, 202.564.2019
- Vickie Tellis, Acting Division Director, ERD, OHR, 202.564.2653
- Howard Barnett, [Executive Operations Team Lead, ERD, OHR – former], 202.564.0394
- Cheri Hembrey, Staff Director, Program Management Staff, ERD, OHR, 202.564.6223
- Jean Bloom, Project Manager, OIG, 617.918.1475
- Claire McWilliams, Auditor, OIG, 312.886.4041
- Wendy Swan, Auditor, OIG, 312.353.5996

F1: Interview Questions developed by audit team [[Link: E.3 1-24-18 meeting questions.docx](#)] OK JMT

Scope:

Met with OHR ERD personnel on Wednesday, January 24, 2018 from 3:00 PM to 3:45 PM EST via teleconference. Interviewed ERD personnel to determine the agency's policies and procedures related to administratively determined positions under the Safe Drinking Water Act (SDWA).

Conclusion:

The administration has 30 administratively determined (AD) slots that it can fill. The allotments always come from the Office of the Administrator. ERD works with the Office of Administrative and Executive Services (OAES) in the Office of the Administrator. The AD guidance document has been in existence for over nine years and no other guidance has been used for over nine years.

(b) (5), (b) (6)

We will set up a second meeting to continue the interview.

Details:

Summary observation: (b) (5)

We will need to schedule a follow-up meeting with personnel that have some institutional knowledge of the process.

F2: Interview Meeting Notes [[Link: E.3 OHR ERD Interview Notes_1 24 2018.docx](#)] OK JMT

Interview Summary (see File 2 (F2) for detailed interview notes) OK JMT

The administration has 30 administratively determined (AD) slots that it can fill. Some administrations only want the AD slots in HQ while others were okay with letting the regions have some AD slots. The allotments always come from the Office of the Administrator. ERD works with the Office of Administrative and Executive Services (OAES) in the Office of the Administrator. OAES prepares the initial paperwork and provides it to OHR ERD for bringing people on.

ERD gets preliminary documents (resume, statement of work, and salary history) from the current White House Liaison when the administration wants to bring someone on for an AD appointment.

The AD guidance document has been in existence for over nine years. (b) (5)

(b) (5) The former ERD executive operations team lead (Barnett) did not use any other AD guidance document during his nine plus years at ERD.

(b) (5), (b) (6)

OHR/ERD personnel could not provide a date for another meeting due to the deputy director's busy schedule (SES pay raises/bonuses, SES meetings, OHR reorg etc.) OIG is willing to work with ERD but we are at a standstill without information.

	Initials	Date	Comments
Preparer Initials/Date Completed	tvS	2/06/2018	(b) (5) CM 2/13/18
Auditor Review	CM	2/13/18	
1 st Level Review	JB	3/12/18	(b) (5)
2 nd Level Review	JMT	6/13/2018	No Comments

Purpose: To interview Executive Resources Division (ERD) personnel in the Office of Human Resources (OHR) to follow up with additional questions on a previous interview related to Administratively Determined Position authority and the hiring process.

Source:

Meeting between OIG and ERD, February 6, 2018 (See details in Scope)

Meeting Participants

- Wes Carpenter, Deputy Director, OHR, 202.564.2019
- Howard Barnett, [Executive Operations Team Lead, ERD, OHR – former], 202.564.0394
- Tracye Smith-Starkey, Audit Follow-Up Coordinator, OHR, 202.566.0121
- Jean Bloom, Project Manager, OIG, 617.918.1475
- Claire McWilliams, Auditor, OIG, 312.886.4041
- Wendy Swan, Auditor, OIG, 312.353.5996
- (b) (6) Intern, OIG, (b) (6)

Scope: Met with OHR ERD personnel on Tuesday, February 6, 2018 from 1:00 PM to 2:05 PM EST via teleconference. Interviewed ERD personnel to determine the agency's policies and procedures related to administratively determined positions under the Safe Drinking Water Act (SDWA).

Conclusion: The process for hiring these administratively determined positions starts high and trickles down. The Central Point of Contact (POC) for political hires is the White House Liaison (WHL). The WHL reaches out to the Office of Administrative and Executive Services (OAES). The OAES prepares the proper paperwork to be submitted to ERD to begin the process of hiring. The HR specialist reviews it, and it goes through the proper channels to bring someone aboard.

The ERD explained that sometimes, as of recent, they hire someone for an administratively determined position and transfer them over to a Schedule C position because it is faster this way.

(b) (5)

We will notify (b) (5).

Details:

Interview summary:

The ERD stated that the reports they sent us summarizing the administratively determined positions for each month are not required, but they do try to get them out on a monthly basis.

(b) (5)

The process for hiring these administratively determined positions comes from higher up. The WHL reaches out to the proper administrative office. For the EPA, this is the OAES. They prepare the proper paperwork to be submitted to the ERD to begin the process of hiring an individual. The HR specialist reviews it, and if they are approved, they submit the paperwork to the proper channels to hire someone.

There are positions that have 'AD' pay but are not administratively determined positions. Every employee's information is in the FPPS.

There are several AD positions that were transferred to Schedule C positions in the year 2017. The way the AD positions are governed differs from agency to agency depending on what title, statute or law, etc. With Schedule C or Non-Career SES, there are approvals and additional paperwork that have to be submitted to OPM along with a green light coming from the Presidential Personnel Office (PPO). They also have to wait for that approval and can't move forward on those actions until the paperwork comes back from the OPM approved and signed.

(b) (5)

The OIG would like to schedule another meeting, and they hope to be able to speak (b) (5).

Find detailed meeting notes in the attached document ([Link: E.03b - Follow-up Interview - OHR ERD - Meeting Notes 2-6-2018_wjs CM.docx](#))

	Initials	Date	Comments
Preparer Initials/Date Completed	DS	09/28/18	
1 st Level Review	AMB	10.2.18	No Comments
2 nd Level Review	JMT	10/22/2018	No Comments

PURPOSE: To interview Principal Deputy General Counsel to obtain his opinion (b) (5)

SOURCE:

1. Interview with Kevin Minoli, Principal Deputy General Counsel, on September 27, 2018.

Participants:

Kevin Minoli, Principal Deputy General Counsel (separated from EPA as of 09/28/18)
John Trefry, OIG, Director of Forensics, 206-566-2474
Angela Bennett, OIG, Project Manager, 404-562-9844
Darren Schorer, OIG, Auditor, 206-553-6288

SCOPE:

Talked with Kevin Minoli to obtain his opinion (b) (5)

CONCLUSION:

Kevin Minoli acknowledged that (b) (5)

Kevin also promised to provide documentation from 2016 (b) (5)

DISCUSSION/ANALYSIS:

We are talking to Kevin to get his thoughts on (b) (5)

Kevin stated that (b) (5)

(b) (5)

[Link: Discussion Document Indexed.docx](#) Kevin mentioned that Gina McCarthy's Chief of Staff believed (b) (5)

(b) (5)

John asked if any (b) (5)

John noted that (b) (5)

Kevin also said that they could (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

John asked Kevin if there was one thing he could change, what would it be. Kevin (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

	Initials	Date	Comments
Preparer Initials/Date Completed	wjs	2/26/2018	
1 st Level Review	JB	3/6/18	(b) (5)
2 nd Level Review	JMT	6/13/2018	No Comments

Purpose:

To meet with Government Accountability Office (GAO) personnel to discuss the administratively determined positions work for both agencies to avoid duplication of effort.

Source:

OIG/GAO Teleconference Meeting on February 22, 2018 at 10:00 EST (details in Scope)

GAO Attendees

Alfredo Gomez, Director, Natural Resources and Environment, (b) (6)
Robert Goldenkoff, Director, Strategic Issues
Joe Thompson, Assistant Director, Natural Resources and Environment, (b) (6)
Erinn Sauer, Senior Analyst, Strategic Issues
Christopher Falcone, Senior Analyst, Strategic Issues
Robert Cramer, OGC
Shirley Jones, OGC
Richard Johnson, OGC

OIG Attendees

John Trefry, Director of Forensic Audits, (202) 566-2474 trefry.john@epa.gov
Jean Bloom, Project Manager, (617) 918-1475 bloom.jean@epa.gov
Leah Nikaidoh, Project Manager, 513.487.2365
Stacey Garfinkle, Attorney, 202.566.2695
(b) (6) Student Intern, (b) (6)
Claire McWilliams, Auditor, 312.886.4041
Wendy Swan, Auditor, 312.353.5996
Kevin Christensen, Deputy Inspector General for Audit & Evaluation, 202.566.1007

Email with List of Attendees [[Link: Email with GAO Meeting Attendees.pdf](#)] JB OK JMT

Scope:

Met with GAO personnel on Thursday, February 22, from 10:00 AM to 10:45 AM EST via teleconference to discuss our work on the Administratively Determined Positions audit and GAO's planned work.

Conclusion:

OIG briefed GAO on our work completed to date. GAO's congressional request deals primarily with hiring authority and whether the agency is circumventing the ethics requirement. GAO thought the OIG work is answering most of their questions. (b) (5)

Details:

Meeting Notes

(GAO) GAO initially talked to Chuck Sheehan; inquiring about the work OIG was doing. GAO wanted to avoid duplication of effort. They would like to know about our scope, questions we've asked, and where we're at. GAO will tell us more about the request they received, the scope of their work and what they are doing.

(John Trefry) We started with one objective, what is the agency using these positions for. It seems to be a catch all for various positions. We've looked at the type of positions and what the agency has done with the folks that come in under the positions. We are looking back nine or 10 years, covering several administrations.

(Jean) We have obtained EPA AD position reports for multiple administrations. The data came from the Executive Resources Division at human resources. The team looked at the different types of positions such as speechwriters, special assistants etc. We worked with OIG Counsel. (b) (5)

The team charted and analyzed the data to see if anything stood out. (b) (5)

We also noticed trends on how the AD slots were being used. (b) (5)

We've done legal research and met with the agency to learn the agency's AD on-board process. We're still gathering information. We've gone through a significant amount of data – number of people brought in and position title.

(GAO) Are there any other AD authorities? (Jean) We don't believe there are any others at EPA.

(Stacey Garfinkle, OIG Counsel) has been researching the laws (b) (5)

(b) (5)

(GAO) What is the business case for using this authority? (Stacey Garfinkle) The legislative history indicates that the intent may have been to increase the number of highly graded positions at EPA to keep in-line with other agencies at that time. At the time, the original pay language was up to the GS 18 level. The goal seemed to increase the number of agency high level positions. There is a note that it exempted the civil service laws and critical needs. The discussions between EPA and Civil Service at the time noted this was the best way to bring them in.

(GAO) We found some authority under Title 42 that is also tied to the appropriations for ORD appointments. It's been extended to 2020. (b) (5)

(Stacey Garfinkle) (b) (5)

(Kevin Christensen) We issued a report on EPA's Title 42 hiring authority around four years ago. We found the agency didn't have a plan as to what positions they use the Title 42 positions. OIG will send GAO the report.

(b) (5)

(b) (5)

(GAO) What asked about timeframes moving forward. (John) We are still in the preliminary research phase and gathering information. We are looking at a May/June timeframe estimate at this time.

(b) (5)

GAO will reach out if Congress has additional questions. John mentioned that our assignment has generated some interest from the press. And they are pushing the ethics issue.

GAO thought (b) (5)

Administratively Determined Positions Discussion Document Review Certification

I have reviewed the discussion document for audit of the *EPA's Use of Administratively Determined Positions*, Project No. OA-FY18-0075, and assured that it was prepared in accordance with all OIG quality control procedures. The report meets applicable OIG policies and generally accepted government auditing standards.

This review ensures that:

- The report is complete and fully answers the project objectives.
- The report has been properly indexed to the supporting working papers.
- All working papers have been reviewed and the entire report is supported by sufficient and appropriate evidence.
- The report complies with all OIG policies concerning disclosure of sensitive or confidential information.
- Comments and appropriate response(s) from the reviewed entity have been included in the report (final reports).

Project Manager/Date Angela Bennett, 4/15/2019

Director/Date John M. Treacy 4/15/2019

	Initials	Date	Comments
Preparer Initials/Date Completed	wjs	3/22/2018 4/06/2018	(b) (5)
1 st Level Review			
2 nd Level Review	JMT	6/13/2018	No Comments

Purpose:

To meet with the EPA Ethics Director to discuss ethics requirements related to administratively determined positions authorized under the Safe Drinking Water Act (SDWA).

Source:

Teleconference meeting with Justina Fugh, Ethics Director, EPA on March 16, 2018

Meeting Participants

Justina Fugh, Senior Counsel for Ethics, OGC, EPA, 202.564.1786

Jean Bloom, Project Manager, OIG, 617.918.1475

Stacey Garfinkle, Attorney, OIG, 202.566.2695

Claire McWilliams, Auditor, OIG, 312.886.4041

Wendy Swan, Auditor, OIG, 312.353.5996

(b) (6), Student Intern (b) (6)

Scope:

Held a teleconference meeting with the EPA Ethics Director on Friday, March 16, 2018 from 11:00 AM to 12:00 PM (Eastern) to discuss the ethics requirements related to administratively determined positions.

Conclusion:

EPA's Senior Counsel for Ethics provided an extensive amount of background information related to political appointments and ethics as they related to the Obama and Trump administrations. (b) (5)

(b) (5) Ethics rules apply based on the appointment authority used. [Details, Meeting Notes, P10] OK JMT Prior to the Obama administration, AD appointees did not resign at the end of an administration. Instead the new administrator made the decisions about the potential continued service of the AD appointees. Justina Fugh thought (b) (5)

[Details, Meeting Notes, P7] OK JMT

Prior to the meeting, the Justina Fugh documented her opinion (b) (5)

[Details, File 1, Page 1, P3] OK JMT (b) (5)

[Details, Notes, P6 & P23 & File 4-Pages 1-2] OK JMT We noted that the language in the 2017 and 2009 emails provided by the Ethics Director regarding EPA AD appointees was not detailed and did not mention EPA's treatment of AD appointees or that AD appointees function as political appointments and occupied confidential and policy-making positions. [Details, File 4, Pages 1-2] OK JMT During our meeting, the Justina Fugh said the Obama administration required all AD appointees to resign by January 20, 2009 and noted AD appointments were always political appointments. [Details, Meeting Notes, P7 & P10] OK JMT In contrast, the Ethics Director's

email to OGE in February 2009 stated “At EPA, we do not treat the ADs as “political” since they survive the end of each administration and are reappointed (or not) by the new administrator. [Details, File 4, Page 2, P3]

OK JMT

Based on the information obtained during the meeting and documentation provided, (b) (5)

See Detail section below for specific meeting notes.

Details:

See links for emails and support from Justina Fugh (EPA Ethics Director) and the OIG attorney meeting notes:

Files

1. Email from Justina Fugh (March 9, 2018) – [[Link: E.09 - Meeting with EPA Senior Counsel for Ethics - Email from EPA Ethics Counsel.pdf](#)]
2. Meeting Notes (Stacey Garfinkle) – [[Link: E.09 - Meeting with EPA Senior Counsel for Ethics - Notes from AD Positions Audit Ethics Meeting_3-16-2018_sg.docx](#)]
3. Email from Justina Fugh with EPA emails to OGE (March 19, 2018) - [[Link: E.09 - Meeting with EPA Senior Counsel for Ethics - Justina Fugh Email with OGE email.pdf](#)]
4. Justina Fugh emails to OGE regarding AD appointments – [[Link: E.09 - Meeting with EPA Senior Counsel for Ethics - JFugh to SJaffe at OGE.pdf](#)]

Meeting Notes

Purpose: To discuss ethics requirements related to administratively determined positions.

P1. (b) (5), (b) (6)

. AD positions are not just limited to Water; it's just where the authority was given to EPA. There was no statute; EPA was created by an Executive Order signed by President Nixon. There is a hard limit on the number of SDWA AD appointments because it's set by statute.

P2. OPM has certain ways of appointing people to service: general schedule (GS), Schedule A, Schedule C, and SES. Schedule C appointments are political appointees. Candidates are routed through the White House, (b) (5)

P3. EPA has 14 PAS Senate approved slots. Fugh does not know how many NC-SES or Schedule C slots EPA is allotted. OPM determines the number. Schedule C appointments are suggested by the agency or White House and go through White House vetting.

P4. (b) (5) AD appointees are appointed by the agency and never go to the White House.

P5. When President Obama issued Executive Order 13490, it included a pledge that all appointees would sign an ethics pledge. That language and requirement to sign the pledge is also in the current EO 13770. The AD appointees are not captured in the definition of "appointee" in the orders. The agency already has 9+ years of experience regarding who signs the pledge and who does not.

P6. (b) (5)

P7. Prior to the Obama administration, AD appointments did not resign at the end of the administration. Instead, decisions about whether the AD positions would continue under the new administration were made by the new administrator. However, this practice did not continue under the Obama administration. The first time ADs were asked to resign occurred during the Obama administration when the chief of staff asked all AD appointments to resign on January 20, or earlier. (b) (5)

P8. (b) (5)

P9. (Jean Bloom) Were the types of positions different (b) (5)

[Link: Discussion Document Indexed.docx](#) P10. (Jean Bloom) Are AD appointments referred to as political appointments? (Justina Fugh) Always. The only difference is how they are appointed. (b) (5)

P11. Jean Bloom asked (b) (5)

P12. (Justina Fugh) We should consider (b) (5)

P13. (Jean Bloom) How does the White House liaison get involved in the process? (Justina Fugh) The White House liaison has been involved as long as she was there. Previously, Fugh doesn't know what role the White House liaison had.

P14. (b) (5)

P15. (b) (5)

P16. (b) (5)

[Link: Discussion Document Indexed.docx](#) P17. The difference is AD appointees don't sign the pledge. If people come in as an AD and subsequently convert to a Schedule C, then Fugh makes them sign the pledge.

P18. (Jean Bloom) Does the agency head determine the needs of the agency? (b) (5)

Justina Fugh's impression was (b) (5)

P19. Justina Fugh explained (b) (5)

P20. The Beachhead team comes from the Presidential Transition Improvement Act. They were Trump designated people that were led by Chris Christie of New Jersey and were in place to work with GSA, OGE etc to start the work of bringing people on and learn and understand what the agency does. (b) (5)

P21. (Jean Bloom) Do you know what the original intent was of the AD appointments in the SDWA (b) (5)

P22. Justina Fugh's role was to respond to FOIA information.

P23. (b) (5)

P24. (Jean Bloom) We will take the information that we have obtained from the different sources and write a report that speaks to our objective to determine how AD positions were used under the SDWA authority.

P25. Stacey Garfinkle wondered if there were any ethics implications from converting Schedule C appointees to NC-SES. (b) (5)

It's basically someone getting a promotion.

[Link: Discussion Document Indexed.docx](#)

P26. Fugh talked about ADs and supervisory positions. (b) (5)

P27. (b) (5)

P28. (b) (5)

P29. (Justina Fugh) The AD slots are by individual so it's considered an appointment. An appointment is how you were brought on board.

Type of appointment – individual

Position – by title

	Initials	Date	Comments
Preparer Initials/Date Completed	tvS	04/05/2018	(b) (5)
Auditor Review	CM	4/5/18	
1 st Level Review			
2 nd Level Review	JMT	6/13/2018	No Comments

Purpose:

To interview Justina Fugh, the EPA Ethics Director, to follow up with additional questions on a previous interview related to Administratively Determined Position authority and the ethics process with it.

Source:

Meeting between OIG and EPA Ethics Director, April 3, 2018 (See details in Scope)

Meeting Participants

- Justina Fugh, Director, Ethics Office, OGC, EPA, 202.564.1786
- Jean Bloom, Project Manager, OIG, 617.918.1475
- Stacey Garfinkle, Attorney, OIG, 202.566.2695
- Claire McWilliams, Auditor, OIG, 312.886.4041
- Wendy Swan, Auditor, OIG, 312.353.5996
- (b) (6), Student Intern, OIG, (b) (6)

Scope:

Met with Justina Fugh from the OGC on Tuesday, April 3, 2018 from 10:00 AM to 10:20 AM EST via teleconference. Interviewed Fugh to determine the agency's policies and procedures regarding ethics related to administratively determined positions under the Safe Drinking Water Act (SDWA).

Conclusion:

(b) (5)

When asked about the ethics pledge waivers, Fugh said that there are different kinds of waivers. The OGE has already opined, and OIG should contact them about the authority, basis, process,

and reporting for the ethics pledge waivers. Fugh recommended reaching (b) (5)

We reached out to OGE. Meeting notes are in the following workpaper: [Link: E.15 - \[R\] Meeting with OGE \(4/09/2018\)](#) OK JMT

Details:

Interview summary:

(b) (5)

Claire asked about the ethics waivers, and Fugh replied that there are a lots of different kinds of waivers such as financial conflicts of interest (b) (5)

In a previous interview with the EPA Chief of Staff, Ryan Jackson, and the White House Liaison, Charles Munoz, Jackson stated that he had hired a couple of people to help Fugh in the EPA ethics department. (b) (5)

When asked about the line between AD's and political appointees, Fugh said (b) (5)

The OIG would like to schedule another meeting, and they hope to be able to speak to the OGE legal branch chief.

Find detailed meeting notes in the attached document ([Link: E.09a - Follow-up Interview - EPA Ethics Director 4-3-2018 - Follow-up meeting notes with Justina Fugh 4 3 2018.docx](#))

	Initials	Date	Comments
Preparer Initials/Date Completed	CM	3/30/18	
1 st Level Review			
2 nd Level Review	JMT	6/13/2018	No Comments

Purpose: To meet with the Office of Personnel Management personnel to discuss the administratively determined positions and political appointments.

Source:

OPM Teleconference Meeting on Wednesday, March 28, 2018 at 10:00 EST (details in Scope)

OPM Attendees

Laura Lynch,
 Julie Brill (b) (6)
 Michael (Mike) J. Mahoney
 Nicole Wright
 William (Bill) Collins
 Nikki Johnson
 Myriam Mayobre

OIG Attendees

John Trefry, Director of Forensic Audits, (202) 566-2474; trefry.john@epa.gov
 Jean Bloom, Project Manager, (617) 918-1475; bloom.jean@epa.gov
 Stacey Garfinkle, Attorney, (202) 566-2695
 (b) (6), Student Intern, (b) (6)
 Claire McWilliams, Auditor, (312) 886-4041
 Wendy Swan, Auditor, (312) 353-5996

Scope:

Met with OPM personnel on Wednesday, March 28, 2018, from 10:00 AM to 10:45 AM EST via teleconference to discuss administratively determined positions and whether or not they could be considered political appointments.

Conclusion:

Overall, we determined that OPM is removed and hands off when it comes to determining whether EPA's particular positions are political. According to OPM, they do not determine if a position under the AD pay plan is political. The agency would make this determination in coordination with the White House Presidential Personnel Office (PPO).

OPM also stressed that Administratively Determined (AD) is a pay plan, not an appointing authority. Individual statutes give agencies specific authority.

We also discussed how EPA had brought on people under AD to bring them on faster because White House and OPM approval is not needed. Typically, agencies would use temporary transitional Schedule C authority, which allows an agency to make quicker temporary 120-day appointments as an agency waits for White House vetting and approval.

Find details of our full conversation here: [[Link](#): E.10 - Meeting with OPM (3/28/18) - OPM Meeting Notes_3 28 2018 Cm.docx] OK JMT

	Initials	Date	Comments
Preparer Initials/Date Completed	wjs	3/15/2018	
1 st Level Review			
2 nd Level Review	JMT	6/13/2018	No Comments

Purpose:

To meet with the Acting Deputy Administrator to determine the Office of the Administrator's (AO) role in selecting and hiring administratively determined position appointments under the Safe Drinking Water Act (SDWA) authority.

Source:

Teleconference meeting with EPA Office of the Administrator officials (listed below) on March 15, 2018 at 11:30 AM (Eastern)

Participants

- Mike Flynn, Acting Deputy Administrator, AO, EPA, 202.564.4711
- Reginal Allen, Senior Advisor to the Acting Deputy Administrator, AO, EPA, 202.564.1029
- Helena Wooden-Aguilar, Acting Deputy Chief of Staff, AO, EPA, 202.564.0792
- John Trefry, Director, OIG, 202.566.2474
- Jean Bloom, Project Manager, OIG, 617.918.1475
- Stacey Garfinkle, Attorney, OIG, 202.566.2695
- Claire McWilliams, Auditor, OIG, 312.886.4041
- Wendy Swan, Auditor, OIG, 312.353.5996

Scope:

Held a meeting with the Acting Deputy Administrator and others in the Office of the Administrator via teleconference on March 15, 2018 from 11:30 AM to 11:50 AM (eastern) to learn AO's role in selecting and hiring administratively determined positions.

Conclusion:

Neither the Acting Deputy Administrator nor the Acting Deputy Chief of Staff are involved in the selection or hiring of administratively determined position appointments under the SDWA authority. In general, the EPA Chief of Staff and White House Liaison select and hire these appointees. Administratively determined positions are managed by the Chief of Staff and White House Liaison (with input from the Administrator) and have been used as political positions. (see highlighted sections in attached file link below with meeting details) JMT

See the attached file for the meeting details. [[Link: E.11 - Meeting with Acting Deputy Administrator-3/15/2018 - Meeting with Acting Deputy Administrator_3 15 2018.docx](#)] JMT

Details:

	Initials	Date	Comments
Preparer Initials/Date Completed	CM	3/30/18	
1 st Level Review			
2 nd Level Review	JMT	6/13/2018	No Comments

Purpose:

To meet with the Chief of Staff and White House Liaison to determine the Office of the Administrator's (AO) role in selecting and hiring administratively determined (AD) appointments under the Safe Drinking Water Act (SDWA) authority.

Source:

Teleconference meeting with EPA Office of the Administrator officials (listed below) on March 27, 2018 at 3:00 PM (Eastern)

Participants

- Ryan Jackson, Chief of Staff, (202) 564-6999
- Charles Munoz, White House Liaison, (202) 564-3097
- Rich Eyermann, Deputy AIGA, OIG, (202) 566-0565
- Jean Bloom, Project Manager, OIG, (617) 918-1475
- Stacey Garfinkle, Attorney, OIG, (202) 566-2695
- Claire McWilliams, Auditor, OIG, (312) 886-4041
- Wendy Swan, Auditor, OIG, (312) 353-5996
- (b) (6), Student Intern (b) (6)

Scope:

Held a meeting with the Chief of Staff and White House Liaison in the Office of the Administrator via teleconference on March 27, 2018 from 3:00 PM to 3:50 PM (eastern) to learn AO's role in selecting and hiring administratively determined positions.

Conclusion:

The Safe Drinking Water Act gives the Administrator wide-ranging authority and flexibility to hire up to 30 individuals under the AD pay plan for positions scientific in nature to administrative. The current administration is using the authority similarly to prior administrations.

[Link: Discussion Document Indexed.docx](#) Technically, AD positions are not political positions by OPM standards, however, the Chief of Staff said someone else would have to give an answer as to why. (b) (5)

. [Link: Discussion Document Indexed.docx](#) [Auditor Note:

(b) (5) EPA does not require appointees to sign the ethics pledge—see statement in “Ethics” section below]

Process

[Link: Discussion Document Indexed.docx](#) We discussed the hiring process. The Chief of Staff and/or White House Liaison identify individuals to fill a number of positions, which is the same process for political appointments. Either specific people expressed interest in working at the EPA, or the AO has reached out to specific people. The Chief of Staff generally would take resumes to the White House Liaison. (b) (5)

Once someone is selected for the position, the White House Liaison then discusses salary, gathers the necessary documentation, fills out the proper forms, and submits them to OARM’s Executive Resource Division, who completes the hiring process. In cases where an employee was converted to a political appointment, the paperwork process would be repeated and modified as necessary.

Conversions [Link: Discussion Document Indexed.docx](#)

Initially, the Administration used the authority to bring personnel on in a timely manner. The process for onboarding Schedule C or Non-Career SES appointments would take longer because of the White House vetting process and needed OPM approval. Conversions between different hiring authorities, AD appointments and political appointments, have been made for expediency, pay, an adjustment to position title, or balancing total allotments of positions allowed.

Ethics

With regard to ethics, those who filled these AD positions do not have to take the ethics pledge. However, the Chief of Staff pointed out that all positions – political and non-political – have ethical restrictions.

Full details can be found in the meeting notes here: [\[Link: E.12 - Meeting with Chief of Staff & WHL \(3/27/18\) - Interview with the Chief of Staff and White House Liaison 3-27-18.docx\]](#) JMT

	Initials	Date	Comments
Preparer Initials/Date Completed	wjs	4/6/2018	
1 st Level Review			
2 nd Level Review	JMT	6/13/2018	No Comments

Purpose:

To gain an understanding of Department of Energy's excepted service authority 42 USC 7231(d) and guidance as it relates to EPA administratively determined positions.

Source:

Teleconference meeting on April 3, 2018 with Department of Energy (DOE) personnel (listed below)

Meeting Participants

Antoinette Moultrie, Human Resources Specialist, DOE
 Jocelyn Richards, Attorney-Advisor, DOE
 Jean Bloom, Project Manager, OIG, 617.918.1475
 Stacey Garfinkle, Attorney, OIG, 202.566.2695
 Claire McWilliams, Auditor, OIG, 312.886.4041
 Wendy Swan, Auditor, OIG, 312.353.5996

Scope:

Held a teleconference meeting with Department of Energy personnel on Tuesday, April 3, 2018 from 10:15 AM to 10:45 AM (Central) to gain an understanding of Department of Energy's excepted service authority and guidance as related to administratively determined positions.

Conclusion:

The DOE statutory language under 42 USC 7231(d) is very similar to EPA's statutory language under the SDWA [42 USC 300j-10]. (File 2, see language and file link in Details) JMT Around 2002 (File 1-link below, question 2) JMT DOE requested the ability to recruit and retain scientific and professional individuals allowed under its statutory authority from OPM to expedite hiring for these types of positions. (File 1-link below, question 1) JMT To obtain the excepted service authority and pay plan from OPM, DOE had to develop extensive guidance, and create a pay plan for the excepted service authority positions. (File 1-link below, question 2) JMT The hiring process begins in the program offices when there is critical need. (File 1-link below, question 6) JMT DOE has not used this authority to make political appointments; those have their own appointing authorities (Schedule C; NC-SES). However, sometimes political may be involved in the hiring process. (File 1-link below, question 5) JMT Individuals hired under DOE excepted service authority do not serve at the will of the Secretary. (File 1-link below, question 7) JMT

(b) (5)

See the attached file for meeting details. [File 1 - Link: E.13 - Meeting with DOE (4/03/2018) - DOE Meeting Notes 4 3 2018 final.docx] JMT

Details:

Statutory language from email [see attached, **File 2. [Link: E.13 - Meeting with DOE \(4/03/2018\) - E.13 EPA](#)**
OIG Audit of ADP (Teleconference Meeting Request).msg]. JMT

DOE: - to the extent the Secretary deems such action necessary to the discharge of his functions, he may appoint not more than 200 of the scientific, engineering, professional, and administrative personnel without regard to civil service laws and may fix the compensation of such personnel not in excess of the maximum rate payable for GS-18 of the General Schedule under section 5332 of title 5. [42 USC 7231(d)]

EPA: To the extent that the Administrator of the Environmental Protection Agency deems such action necessary to the discharge of his functions under title XIV of the Public Health Service Act and under other provisions of law, he may appoint personnel to fill not more than 30 scientific, engineering, professional, legal, and administrative positions within the Environmental Protection Agency without regard to the civil service laws and may fix the compensation of such personnel not in excess of the maximum rate payable for GS-18 of the General Schedule under section 5332 of title 5. [42 USC 300j-10]

	Initials	Date	Comments
Preparer Initials/Date Completed	wjs	4/17/2018	
1 st Level Review			
2 nd Level Review	JMT	6/12/2018	No Comments

Purpose:

To discuss ethics requirements pertaining to EPA Administratively Determined (AD) position appointments under the Safe Drinking Water Act (SDWA).

Source:

Teleconference meeting on April 9, 2018 with Office of Government Ethics (OGE) personnel (listed below)

Meeting Participants

Seth Jaffe, Chief, Ethics Law & Policy Branch, U.S. OGE, (b) (6)

Rachel Dowell, Attorney-FOIA Officer, U.S. OGE, (b) (6)

Jean Bloom, Project Manager, OIG, 617.918.1475

Stacey Garfinkle, Attorney, OIG, 202.566.2695

Wendy Swan, Auditor, OIG, 312.353.5996

(b) (6) Student Intern, OIG, (b) (6)

Scope:

Met with OGE personnel via teleconference on Monday, April 9, 2018 from 2:00 to 2:45 PM (Eastern) to discuss ethics requirements and implications pertaining to EPA administratively determined position appointments under the SDWA.

Conclusion:

[Link: Discussion Document Indexed.docx](#) (b) (5)

(b) (5)

[File 1, Paragraph 6] OK JMT The question involves appointment authority. [File 1, Paragraph 7] OK JMT Whether an appointment authority is appropriately used is not OGE's issue. [File 1, Paragraph 7, 9] OK JMT According to OGE, it is up to OPM or DOJ to determine whether an appointment authority is being abused. [File 1, Paragraph 7, Sentence 3] OK JMT OGE only gets involved with specific individuals. [File 1, Paragraph 9] OK JMT OGE can opine on the conduct of an employee after appointment on misuse of position issues. [File 1, Paragraph 22] OK JMT

Several legal advisories contain guidance on the definition of political appointee and who has to sign the pledge under Executive Order 13770. [File 1, Paragraph 3] OK JMT Another informal advisory (04x10) contains factors related to covered noncareer employees (sign the pledge), which OGE thought some factors may be in play for AD appointments. However, OGE noted again that whether the appointments are appropriate or not is not up to OGE. [File 1, Paragraph 11] OK JMT

See the attached file for meeting details. [File 1. [Link: E.15 - Meeting with OGE \(4/09/2018\) - OGE Meeting Notes_4 9 2018.docx](#)] OK JMT

Details: